No. 282

United States Court of Appeals

For the Second Circuit

UNITED STATES OF AMERICA,

Appellee,

—vs.—

SALVATORE APUZZO,

Appellant.

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK

APPELLANT'S APPENDIX

ARNOLD D. ROSEMAN,
Attorney for Appellant,
120 Broadway,
New York 5, N. Y.

INDEX

	PAGE
Statement Under Rule 15(b)	1
Information (No. C145-283)	2
Information (No. 147-278)	4
Excerpts from Transcript of Testimony	6
Motion to Set Aside Verdict	55
Motion for Mistrial Renewed	55
Order of Noonan, *U.S.D.J.*	58
Order of Leibell, *U.S.D.J.*	60
Judgment and Commitment	61
Order of Walsh, *U.S.D.J.*	63
Judgment and Order of Probation	65
Notice of Appeal	67

GOVERNMENT'S WITNESSES

Edward E. Goodwin:	
Direct	7
Cross	11
Columbus Fletcher:	
Direct	13
James J. Guthrie:	
Direct	15
Cross	17

PAGE

Martin D. Lemler:
Direct 25
Cross 27

Vincent J. Gianatasio:
Direct 35
Cross 35, 50

DEFENDANT'S WITNESSES

Ernest Broussard:
Direct 52

Arthur Isidori:
Direct 54

United States Court of Appeals

For the Second Circuit

C 145-283
C 147-278

UNITED STATES OF AMERICA,

Appellee,

—vs.—

SALVATORE APUZZO,

Appellant.

Statement Under Rule 15(b)

This is an appeal from a judgment of conviction by defendant-appellant. He was convicted on information #C 145-283 containing two counts charging him with failing to pay a special occupational tax and failing to register (Title 26, Secs. 2707b, 3277, 3290, 3291(a), 3292 and 3294) and one count in information #147-278 charging him with conspiracy with two other individuals (Title 18, Sec. 371).

Trial was held in the United States District Court for the Southern District of New York before Hon. Edward J. Dimock and a jury on November 9, 10, 14 and 15, 1955. The jury returned a verdict of guilty as to all three counts. The defendant-appellant was sentenced on December 13, 1955 to 60 days imprisonment, $3,000 commuted fine and 4 years probation.

This is also an appeal from intermediate orders denying (a) suppression of evidence dated May 23, 1955 (Noonan, J.), (b) for bill of particulars dated May 31, 1955 (Leibell, J.) and (c) suppression of evidence, bill of particulars and dismissal dated July 5, 1955 (Walsh, J.).

Notice of appeal to this Court was filed on December 15, 1955, appealing from the judgment of conviction and aforementioned intermediate orders.

Information (No. C 145-283)

(409)

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

C 145-283

C 147-278

UNITED STATES OF AMERICA,

—vs.—

SAMUEL AARON, SALVATORE APUZZO and ERNEST BROUSSARD,

Defendants.

The United States Attorney charges:

On or about the 5th day of August, 1953, the defendants SAMUEL AARON, SALVATORE APUZZO and ERNEST BROUSSARD who engaged in the business of accepting wagers, in the County of New York, New York, individually and as a co-partnership during the month of August, 1953, did unlawfully, wilfully and knowingly fail to pay the special tax imposed by law to the Director of Internal Revenue for the Upper Manhattan District of New York, New York. (Title 26, United States Code, Sections 2707(b), 3277, 3290, 3292 and 3294.)

Information (No. C 145-283)

SECOND COUNT

The United States Attorney further charges:

On or about the 5th day of August, 1953, in the Southern District of New York, the defendants SAMUEL AARON, SALVATORE APUZZO and ERNEST BROUSSARD who engaged in the business of accepting wagers in the County of New York, individually and as a copartnership during the month of August, 1953, and who were required to pay the special tax imposed by law, did unlawfully, wilfully and knowingly fail to register with the Director of Internal Revenue for the Upper Manhattan District of New York, at New York, New York, as required by law. (Title 26, United States Code, sections 2707(b), 3277, 3291(a), 3292 and 3294.)

J. EDWARD LUMBARD
United States Attorney

Information (No. 147-278)

(484)

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

The United States Attorney charges:

1. From on or about the 28th day of July, 1953, up to and including the 5th day of August, 1953, in the Southern District of New York, the defendants, SAMUEL AARON, SALVATORE APUZZO and ERNEST BROUSSARD, and others to the United States Attorney unknown, did unlawfully, wilfully and knowingly combine, conspire, confederate and agree together and with each other to violate the United States Code, Title 26, Sections 2707(b), 3277, 3290, 3291(a), 3292 and 3294.

2. It was a part of the conspiracy that the said defendants unlawfully, wilfully and knowingly would engage in the business of accepting wagers in the County of New York, New York, individually and as a co-partnership, and fail to pay the special tax imposed by law to the Director of Internal Revenue for the Upper Manhattan District, at New York, New York.

3. It was a further part of said conspiracy that the said defendants unlawfully, wilfully and knowingly would engage in the business of accepting wagers, in the County of New York, New York, individually and as a co-partnership, and would fail to register with the Director (485)

of Internal Revenue for the Upper Manhattan District of New York, at New York, New York, as required by law, in violation of Title 26, United States Code, Sections 2707(b), 3277, 3291(a), 3292 and 3294.

OVERT ACTS

1. In pursuance of said conspiracy and to effect the objects thereof, on or about the 3rd day of August, 1953, in the Southern District of New York, the defendant SAMUEL AARON accepted a wager from Edward E. Goodwin.

2. In further pursuance of said conspiracy and to effect the objects thereof, on or about the 3rd day of August, 1953, in the Southern District of New York, the defendant ERNEST BROUSSARD accepted a wager from Columbus Fletcher.

3. In further pursuance of said conspiracy and to effect the objects thereof, on or about the 5th day of August, 1953, in the Southern District of New York, the defendant SAMUEL AARON accepted a wager from Columbus Fletcher.
(Title 18, United States Code, Section 371.)

J. EDWARD LUMBARD
United States Attorney

Excerpts from Transcript of Testimony

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

C. 145-283
C. 147-278

[SAME TITLE]

Before:

HON. EDWARD J. DIMOCK, *D.J.*, and a Jury.

New York, November 9, 1955,
3.00 o'clock p.m.

Appearances:

PAUL W. WILLIAMS, ESQ.,
United States Attorney, for the Government;
By GEORGE S. LEISURE, JR., ESQ.,
Assistant United States Attorney.

BENJAMIN LEVY, ESQ.,
Attorney for Defendants
Samuel Aaron and Ernest Broussard.

ARNOLD D. ROSEMAN, ESQ.,
Attorney for Defendant Salvatore Apuzzo.

Edward E. Goodwin—for Government—Direct

(7) Edward E. Goodwin, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct Examination by Mr. Leisure:

Q. Mr. Goodwin, will you tell the Court and jury how you are employed at the present time? A. I am an investigator for the Alcohol & Tobacco Division of the Treasury Department.

Q. And how long have you worked for the Treasury Department? A. 14 years.

Q. During the summer of 1953 were you given a special assignment by the Treasury Department? A. I was.

Mr. Rosenman: Judge Dimock, may I at this time ask that the other witnesses be excluded from the courtroom during the testimony?

The Court: So directed.

Q. Will you tell us, Mr. Goodwin, what the nature of that assignment was in the summer of 1953? (8) A. I was assigned to assist the Rackets Squad of the Intelligence Division of the Treasury Department in their investigation of violations of the wagering tax laws.

Q. Now, directing your attention to July 28, 1953, will you tell us what you did on that day? A. On that day at about 12:30 in the afternoon I entered the butcher shop at 363 Lenox Avenue in New York City.

I saw a man whose name I now know to be Samuel Aaron and another man standing behind the counter of the butcher shop.

There were about four or five people standing in front of the counter in front of Samuel Aaron. I got in the line, and as the people moved up I saw that they were given slips of paper upon which were written numbers, and giving the money to Samuel Aaron.

When my turn came I gave Samuel Aaron a slip of paper upon which I had written about a half hour earlier the number 503, the amount 50 cents, and the initials R.G. I gave him a dollar bill with the slip.

Samuel Aaron looked at the slip and then gave me 50 cents in change.

(9) I left the shop after that.

Q. Did you have any conversation with him at that time at all?

. . . . . .

Q. Now, Mr. Goodwin, I direct your attention to July 30, 1953, and ask you if you will tell us, (10) please, what you did on that day? A. On July 30, 1953, at about 12.30 in the afternoon, I again entered the shop at 363 Lenox Avenue.

I saw two men behind the counter of the shop, and one of the men was Samuel Aaron.

On this occasion I handed a slip of paper upon which I had written about a half hour earlier the same No. 503, 50 cents, and the initials E. G.—the initials R. G., I am sorry.

There were a few people in the shop waiting in front of Mr. Aaron when I walked in the place. When my turn came I gave Samuel Aaron a slip of paper which bore the data.

Samuel Aaron looked at it and took a pad which was up on top of the counter and copied the inscription from the slip I had given him and he said to me, "The next time make your slip larger."

Q. Did you have any occasion to return to the butcher shop again on that day? A. Yes, about ten minutes after I left the shop I returned to the shop, and on that occasion I gave him a slip of paper upon which I had written the number 239, the amount 50 cents, and the initials (11) E. G.

I left the shop after giving him the 50 cents together with the slip of paper.

Q. Now, on the next day, the 31st of July, did you return again? A. Yes, on the 31st.

Q. Will you tell us about that? A. On the 31st of July I went there at about 12.30 in the afternoon.

I saw two men behind the counter; one of the men was Samuel Aaron. I saw several people in the shop waiting in line in front of Samuel Aaron.

I gave when my turn came—I gave Samuel Aaron a $1 bill together with a slip which I had already prepared. This slip bore the notation 503, 50 cents, R. G.

Samuel Aaron inspected the slip and then gave me 50 cents in change.

About—I left the shop and about ten minutes later I returned to the shop and at that time I asked Samuel Aaron what was the winning number yesterday.

Samuel Aaron did not say anything to me in answer. He pointed to a scale which was up on top of the counter, and looking at the end of the scale (12) that he pointed to I saw that three numbers had been pasted, the type of numbers used to denote the numbers or the price of meat, which had been pasted on the end of the scale. The numbers were 777.

Q. Did you leave the place? A. I left the place at that time.

Q. Now, on August 3 will you tell us what you did? A. On August 3 I was accompanied by Investigator Fletcher of the Treasury Department, at about 12.30 when I entered the shop at 363 Lenox Avenue.

On that occasion there were several people in the shop waiting in line. We got in line and when my turn came I gave Samuel Aaron a slip of paper which bore the notation 503, 50 cents, R. G., together with a $1 bill.

Samuel Aaron looked at the slip and then gave me 50 cents change.

I saw Investigator Fletcher stop in front of the second man who was behind the counter.

Inspector Fletcher also prepared a slip of paper before he entered the shop, and on this slip of paper he had made —he had written a three-digit numeral and an amount of money, some initials— (13) I don't know which initials were used. I don't remember.

The second man accepted the slip of paper and a $1 bill, to the best of my recollection a $1 bill, from Inspector Fletcher—pardon me, Investigator Fletcher.

He then passed the bill and the slip to Samuel Aaron who was standing beside him, and Samuel Aaron after inspecting the slip handed the 50 cents in change, the slip and the bill—after accepting the slip and the bill handed 50 cents in change to the man who was standing behind the counter with him. This man in turn handed the 50 cents in change to inspector Fletcher. We then left the shop.

* * * * *

(14) Q. Will you tell us, Mr. Goodwin, what happened when you entered the butcher shop on August 5? A. On August 5 about 1.20 in the afternoon Investigator Fletcher and I entered the butcher shop at 363 Lenox Avenue.

We saw two men standing behind the counter—I believe there were two people, to the best of my recollection, about two people, two or three people in the shop, standing in front of Samuel Aaron.

In my hand I held a slip of paper upon which I had written 503, 50 cents, R. G.

(15) Q. Had you previously prepared that slip? A. That slip of paper had been prepared about two hours earlier in this building in the office of Assistant U. S. Attorney Patterson in the presence of Special Investigator Gianafacio, Assistant U. S. Attorney Patterson, Special Agent Wilson, of the Intelligence Division.

* * * * *

Q. What did you do with the slip that you prepared after you got in the butcher shop? A. After entering the butcher shop I saw two men standing behind the counter. One of them was Samuel Aaron and the other man was standing in such (16) a position that I naturally approached him.

I gave him the slip of paper together with 50 cents. The slip of paper bore the inscription 503, 50 cents, R. G.

The man who accepted the slip from me inspected the slip and accepted it with the money.

* * * * *

(20) *Cross Examination by Mr. Roseman:*

* * * * *

(21) Q. And this was the first time you went out on a case like this; is that right? A. That is right.

Q. The first time? A. Yes.

Q. is that right, Inspector? A. Yes, Investigator.

Q. And it was the last time, Investigator? A. Yes.

Q. The first and last? A. That is right.

Q. Now, you testified before the Judge and jury, before the jury and Judge Dimock, that it was 12.30 one day and one o'clock another day, 12.15 another day? (22) A. Yes.

Q. You remember those times very well, don't you? A. Yes.

Q. You remember times very well, don't you? A. Yes.

Q. Exceptionally well, Mr. Goodwin? A. Not exceptionally. It was the practice to go every day about the same time.

Q. Well, then, you don't know for sure whether it was 12, or 12.30, or one o'clock? A. Yes, I know.

Q. You do? A. Yes.

Q. And it is your testimony, is it, Mr. Fletcher— A. Goodwin.

Q. Mr. Goodwin, I am sorry, but your partner is Mr. Fletcher, is that right, Mr. Goodwin? A. Yes.

Q. That on a certain day you went there? A. Yes.

Q. All right. What time did you go there on July 28? A. About 12.30 in the afternoon.

Q. Was it before or after? A. Maybe two minutes. (23) I said about 12.30.

Q. And July 30th? A. The same.

Q. The 31st? A. About the same time.

Q. August 3rd? A. About the same time.

Q. August 5th? A. About 1.20 in the afternoon; at about 1.20 in the afternoon.

Q. And how long were you in the store each particular day, five minutes? A. Well, it depends on the number of people who were ahead of me on that day.

Q. Tell the jury. A. About—

Q. On July 28th? A. About three or four minutes.

Q. July 30th? A. About the same time.

Q. July 31st? A. About the same length of time.

Q. August 3rd? A. About the same length of time.

Q. August 5, 1953? A. I think that was about the shortest.

Q. About a minute? A. Well, longer than that. I had to wait in line, probably two minutes or three minutes.

(24) So you would say in summarizing, Mr. Goodwin, that on the five days that you testified to it would be between two and four minutes? A. That is about correct.

Q. From the time that you entered the store to the time that you departed; is that right? A. That is about right.

Q. Now, did you see any meat being sold in the store? A. On one occasion, on one day I saw one parcel of meat sold.

Q. And did you see the meat at a counter there? A. I saw meat under the counter.

Q. A Frigidaire? A. Yes.

Q. Also in the window? A. Yes.

Q. And during all those times, Mr. Goodwin, you did not see this defendant Apuzzo, did you? A. No, sir.

* * * * * *

(25) New York, November 10, 1955;
10.30 o'clock a.m.

* * * * * *

COLUMBUS FLETCHER, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct Examination by Mr. Leisure:

* * * * *

(26) Now, directing your attention to August 3, 1953, Mr. Fletcher, would you tell us what you did on that day? A. On August 3, 1953, at about 12.30 p.m., accompanied by Investigator Edward E. Goodwin I entered the meat market located at 363 Lenox Avenue.

As I entered the meat market I observed behind (27) the counter two men who were later identified to the officers of the Alcohol & Tobacco Tax Unit, of 143 Liberty Street, and I learned their names to be Samuel Aaron and Ernest Broussard.

In front of Mr. Aaron at that time was a line of people, and I observed Investigator Goodwin getting on that line. I stood alongside and observed—I saw Mr. Aaron write on a 3 x 5 pad of the butcher's numbers and initials that the men at the front of the line gave him. I also saw him give them money.

I observed Investigator Goodwin give to Mr. Aaron—he had made a slip of paper which he previously prepared, and he gave him a dollar bill.

Mr. Aaron accepted the slip and the dollar bill and give him 50 cents in change.

As I waited in line Mr. Broussard came over to me and I handed him a slip that I previously prepared, bearing the notation 671; 50, and with the initials C.F. for identification.

He accepted the slip and the dollar bill, looked at the slip and gave the slip and the dollar bill to Mr. Aaron, who in turn gave him 50 cents in change, which he gave me.

I then left the premises.

(28) Q. Did you return to the same location on the 5th day of August 1953? A. Yes, sir, I did.

Q. What were the circumstances at that time? A. On the 5th of August 1953, at about 1.20 p.m. in the afternoon, accompanied by Investigator Edward E. Goodwin, I again entered the meat market.

At that time I observed two men behind the counter. One of those men was Mr. Aaron and in front of Mr. Aaron was a line of people.

And I observed several of the people in line give him slips and some called out numbers and he put it down on a pad of paper. I saw them give him money also.

I observed Investigator Goodwin give him a slip at that time together with money.

I in turn gave to Mr. Aaron a slip of paper that I had previously prepared that day at the office of Assistant U. S. Attorney Patterson, together with a duplicate copy of that slip.

* * * * *

(32) Q. Now, Mr. Fletcher, with respect to Government's Exhibit 2, which you testified is the original slip, what did you do with that when you were in the premises of 363 Lenox Avenue on August 5? A. The original slip there I gave to Mr. Aaron at that time together with the $20 bill.

Mr. Aaron accepted the bill, the $20 bill, and he looked

at the slip and gave the $20 bill and the slip to another man who was in the store at that time.

The latter man gave me $19 in change.

I then asked Mr. Aaron what number won the previous day, August 4, 1953.

He replied that No. 337 won.

I then left the premises.

* * * * * *

(36) JAMES J. GUTHRIE, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination by Mr. Leisure:

* * * * *

Q. What is your educational background, Mr. Guthrie? A. I am an attorney, a member of the bar of the State of New York.

* * * * *

(53) Q. Mr. Guthrie, before the jury was excused you were telling us about the search of the safe by Mr. Apuzzo, or that Mr. Apuzzo had opened in the store.

Did you find cash in the safe? A. We found approximately $10,000 in the safe.

Q. In cash? A. In cash.

Q. Were there also documents and other things in the safe? A. There were various insurance policies, leases, and there were also two envelopes, one of which contained nine policy slips and another of which contained six policy slips.

Mr. Leisure: Will you please mark these three and four for identification.

(Marked Government's Exhibits 3 and 4 for identification.)

Q. Now, Mr. Guthrie, I am going to show you Government's Exhibit 3 for identification, which is a brown envelope containing nine slips of paper with writing on them, and ask you if that was found in the safe? A. That was found in the safe. I noted the fact that it was so found and put my initials on (54) it at the time.

Q. And did you open the envelope at that time to look? A. No, the envelope was open.

Mr. Leisure: May the record show that Government's Exhibit 3 for identification has nine separate slips of paper in it.

Q. I show you Government's Exhibit 4 for identification and ask you what that is? A. This second envelope contained six slips and 78 individual plays.

Q. And that was also in the safe? A. That was also in the safe, and also was initialed by me at the time of removal thereof.

Mr. Leisure: I offer Government's Exhibits 3 and 4 for identification in evidence, and if there are any markings other than what was on the envelope at the time that it was sealed and stapled, the Government will consent to have such markings deleted therefrom.

Mr. Roseman: I make the same objection, your Honor, further that no proper foundation has been laid, and there has been no connection with this defendant; incompetent, irrelevant and immaterial, (55) and also on the further grounds that I argued before your Honor in connection with the motion, and if there are any prejudicial markings on these papers they should be removed.

James J. Guthrie—for Government—Cross

The Court: The prejudicial markings will be obscured.

With respect to the other objections, they are overruled.

Mr. Roseman: Exception.

* * * * * *

(64) Q. Was there a further conversation with Mr. Apuzzo after the safe had been searched? A. Immediately after we finished with the safe the search was still going on in the store for additional policy slips.

We asked Mr. Apuzzo as to the location of any additional slips in the store.

At that time he beckoned to Ernest (65) Broussard, who was behind the counter, toward the front of the store, the north end of it, and said to Ernie—pointed to a scale on the counter and said, "Give them the slips."

Q. And what happened then? A. At that point Mr. Broussard removed the weighing platform of the scale—it was a white scale—and then a mechanical part of the scale directly under the weighing platform, and there were numerous slips, policy slips.

Q. Did you collect those policy slips? A. Those slips were taken from the scale and placed in an envelope, brown envelope, and taken by us along with other evidence.

* * * * * *

(69) *Cross Examination by Mr. Roseman:*

* * * * * *

(70) Q. Mr. Guthrie, did you turn over the evidence in this case to the state or city authorities for a state violation? A. I did not.

* * * * * *

(71) Q. Did you know that he had filed income tax returns for the butcher business since 1946, 1947, 1948, 1949,

'50, '51, '52, and '53 as running a retail butcher shop at 363 Lenox Avenue? A. I do not know that of my own knowledge, no, sir.

Q. Have you had occasion to examine his income tax returns? A. I personally have not.

Q. Have you been told of his income tax returns? A. I have.

Q. And do you know as a fact, Mr. Guthrie, that in the year 1946 Mr. Apuzzo filed an income tax return showing $44,000 worth of receipts for sales of meats in the retail butcher shop, and that the cost of the goods was $31,774.20? A. I did not know that of my own knowledge.

* * * * *

(73) Q. Did you make any investigation, Mr. Guthrie, to determine what income tax returns were filed by this defendant for the years 1946 to 1953? A. I did not.

* * * * *

(74) Q. And Wilson told you that the United States Attorney's office had inquired about Mr. Apuzzo's (75) tax returns for 1953? A. That would be a matter of course, yes.

Q. I didn't get your answer, sir. A. I believe that was the substance of it, sir, yes.

Q. And did he tell you that he was seeking information as to what was contained in that return? A. That would be the sole objective, I should think.

Q. And were any figures discussed regarding the cost of goods sold and the sale of meat at his retail butcher shop? A. Not with me.

* * * * *

(77) Q. Mr. Guthrie, when you arrived at the premises 363 Lenox Avenue, on the afternoon of August 5, 1953, who was with you? A. Special Investigator Giantiasio,

Specal Investigator Lemler, Special Investigator Di Cupua.

(78) Q. How do you spell that? A. D-i- C-u-p-u-a—I believe that is correct.

Q. Is that all? A. Also present—

Q. I said who were with you? A. All right. I believe initially that is all that was with me.

Q. And you arrived there by automobile? A. I did.

Q. You walked into the store, or all four of you? A. We did.

Q. And did you have anything in your hand? A. Nothing.

Q. You had no revolver? A. Did not.

Q. You never had a revolver? A. Did not carry one that day.

Q. I see. How about the other three men? A. No one had a revolver in their hands.

Q. You are sure of that? A. Positive.

Q. And did you walk immediately to the back of the store? A. Mr. Lemler, Mr. Giantiasio and myself.

Q. And so the jury can obtain your knowledge of the store, on the front is a sign? A. Offhand I don't recall.

(79) Q. And is there any name under the sign? A. Offhand I don't recall that, either.

Q. And did you see the name, Apuzzo, on the window? A. I did not.

Q. You did not notice it or you didn't see it? A. I did not notice it.

Q. Well, is it your testimony that it was not there— A. It is not a question—

Q. —or that you— A. I did not look at the window, at least I don't recall looking at the window.

Q. And was there meat in the window? A. There was a meat case in the window, yes.

Q. Containing meat? A. Containing meat.

Q. And when you walked into the store there was a counter? A. I might say that I observed the fact that there was meat in the window after we got into the store and during the course of the search.

Q. And did you see meat on the counter? A. There was meat in the counter.

Q. And was it stacked full? A. I don't know what you mean by "stacked full."

Q. And did you enter any refrigerator? A. We did.

Q. And was there meat in the refrigerator? (80) A. There was.

Q. And did you see the stamps on that meat indicating when it was delivered or when it was purchased? A. I don't quite get your question.

Q. Well, I will reframe it, Mr. Guthrie. At any time in your examination of the meat in the refrigerator did you notice the date, the stamp date of the United States Government indicating when it was shipped? A. No, I was not interested in that, sir.

Q. You did not notice it? A. No.

Q. You did not pay any attention to it? A. No.

Q. And after the refrigerator there is a hallway to the back, to the rear of the store? A. You have the front part of the store as you enter. Meat counters around the right as you enter. The refrigerator or icebox you might call it, the large wooden box, framed in wood, was on the right toward the rear of the store. To the left of that refrigerator you had a corridor, the size or length of the refrigerator leading to the back room.

* * * * *

(86) Q. And who was in the back room when you three arrived? A. Mr. Apuzzo, a tie salesman, a man who identified himself as a tie salesman, whom I believe was named Schindler. Also present was a man by the name of Avitable, something like that.

Q. Had you seen this tie salesman showing his wares, and was his box open? (87) A. His box was open on the table that I described before.

Q. And the ties were disarranged? A. The tie box was open.

Q. And was Mr. Apuzzo holding a tie in his hand? A. They were examining ties, evidently buying them.

* * * * *

(99) Q. Did Mr. Apuzzo open the safe for you? A. He did.

Q. Immediately? A. No, not immediately.

Q. Excuse me? A. Not immediately.

Q. Did you ask him to? A. We did.

Q. And what did he say? A. He stated he did not know the combination to it.

Q. And did you tell him that you were going to take the safe downtown? A. I did.

Q. And did he say to you that his brother-in-law knew the combination, a man by the name of Isidori, and that he would have to call him for it? A. There was something said to that effect, that he did not have the combination, that somebody else did.

Q. And did you hear him make a telephone call to Mr. Isidori? A. I do not recall, sir.

Q. Did you see him make the telephone call? (100) A. I do not recall.

* * * * *

(104) Q. What did you overhear? A. There was an additional question of Mr. Apuzzo as to what he was doing there, who he was.

He identified himself.

Other gentlemen were interviewed. Men in the front of the store were being interviewed.

* * * * *

(107) Q. Didn't he tell you that the reason he did not want the safe taken downtown was that he had his money (108) in there? A. That was not said, sir, until after he asked us whether we were going to take it, and that was after the safe was open, not prior, sir.

Q. And he said his money was in there? A. No, not prior. We did not know what was in the safe.

Q. But at some time you saw that his money was there? A. Not that his money was there. He said, "That is my money" after it was opened, the safe.

Q. And he did not claim ownership of anything else, did he? A. No.

Q. Just the money? A. That is right.

Q. And that was money was not found in the open part of the safe; there was a compartment with a lock in there? A. There are many compartments with locks.

Q. And he did not have a key to one compartment in which money was found? A. We had to break it open forcibly.

Q. He did not have a key? A. Not to my knowledge.

Q. He opened it? A. The combination.

Q. With the key inside? A. Not to my knowledge.

(109) Q. Did he tell you why he kept his money there? A. Yes.

Q. Tell the jury why. A. Mr. Apuzzo stated that he kept his money there because the Federal Government had liens of almost a million dollars against his income.

Q. That is right. And he could not put it in the bank because the Government would take it, is that right? A. The Government had assessed taxes of approximately three-quarters of a million dollars.

Q. And he told you that the assessment was erroneous? A. That is the usual claim, yes, sir.

Q. Did you see him call over Mr. Broussard and (110) say to him, "If you have any slips here give it to these people"? A. That is not what he said, sir.

Q. What did he say? A. He said, "Ernie, give them the slips in the scale," and pointed to the scale.

Q. Did you see this defendant point to the scale? A. Very definitely.

Q. With his right hand or his left hand? A. I do not recall.

Q. But he pointed, Mr. Guthrie? A. Yes, very definitely.

Q. You are sure of that? A. Very definitely.

Q. You are sure of that statement that he pointed, and that you did not see Mr. Broussard being called over and being asked or told, "If you have slips here give it to these men"? A. We asked Mr. Broussard. He did not know where they were, the slips in the drawer, until Mr. Apuzzo directed him to them.

Q. Did you see Mr. Apuzzo handle any of these slips? A. No.

(111) Q. And I presume that you questioned Mr. Apuzzo, and did he admit that he was accepting policy slips? A. No, sir.

Q. Did he ever admit that to you? A. No, sir, he did not.

Q. And you do not have a written statement, do you, that he admitted accepting policy slips, Mr. Guthrie? A. No, sir.

Q. And the U. S. Attorney's office does not have it, is that right, Mr. Guthrie? A. That, sir, you would have to ask the U. S. Attorney.

Q. None of your men have it? A. To my knowledge, no.

(112) Q. And you showed him to certain people down (113) there, didn't you? He was viewed? A. Yes.

Q. Nobody identified him? A. No.

* * * * *

(116) Q. Did you ever ascertain who had access to the safe? A. Yes, sir.

Q. Who besides Mr. Apuzzo? A. No one to my knowledge other than Mr. Apuzzo.

Q. That is your testimony, that no one had access? A. No, sir, it is not my testimony. The only one I know of who did access was Mr. Apuzzo.

Q. You mean there may have been others? A. Without my knowledge, certainly.

Q. There could have been? A. Oh, surely.

Q. One question, Mr. Guthrie. Were the bills of Mr. Apuzzo showing the purchases of meat taken from the store? A. Certain records of that type were removed, yes.

Q. Were they ever returned? A. I believe, sir, there was a request for their return in the Tax Court action that is now in progress which you questioned me about previously.

* * * * *

(117) Q. Now, Mr. Guthrie, do you recall what those purchase bills or invoices indicated? A. I personally have never examined them, sir.

* * * * *

(133) Q. At any time did you see this defendant behind the counter? A. No, sir, excepting when he was on the—if you might say behind the counter, it was at the end of the refrigerator, adjacent to the counter. Then he went to the safe, which was behind the counter, opened (134) that. After the contents were looked at, and inventoried, he then took his place again by the refrigerator and pointed to the scale thereafter.

Q. Did you see him at any time go near the scale? A. No.

Q. Did you ever see him put anything there? A. No.

Q. And it was after a Mr. Broussard had come over to him that you say the defendant pointed to a scale? A. No, sir.

Q. Is that right? A. No, sir, Mr. Broussard—

Q. What is your testimony? A. Mr. Broussard was standing on the counter side near the front door window—the front window of the shop, which was about as far away from Mr. Apuzzo that he could get within the limits of the shop. The scale, then, was between Mr. Apuzzo and Mr. Broussard. Mr. Apuzzo pointed to the scale and Mr. Broussard walked—

Q. How far was Mr. Broussard away from Mr. Apuzzo when, as you said, he pointed to the scale? A. Oh, approximately 10 feet to 15 feet.

(135) Q. He didn't say anything to him, did he? A. Oh, yes, he did.

Q. He spoke to him at a distance of 10 to 15 feet? A. That's right.

Q. What did he say to him? A. He said, "Ernie"—in fact—not his exact words.

Q. In effect? A. "Ernie, show them the slips under the scale," and pointed to the scale, and that was it.

Q. And Mr. Broussard went over to the scale; is that right? A. That is correct.

* * * * *

(138) MARTIN D. LEMLER, called as a witness by the Government, being first duly sworn, testified as follows:

Direct Examination by Mr. Leisure:

* * * * *

(139) Q. What did you do then? A. I knew Mr. Apuzzo by sight when I entered the place prior to that.

Mr. Rosenman: I didn't get that.

The Witness: I knew Mr. Apuzzo by sight (140) before I had entered the premises.

A. (Continuing) When we got there, I had all four of them identify themselves when other investigators were present. Mr. Apuzzo had a driver's license listing his name as Salvatore Apuzzo at some Scarsdale address, and had $1,390-some-odd on his person.

Q. Did you search him yourself? A. No. I had him remove the things from his pocket and place them on a desk, and the other men that were present, that is, the other friends of Mr. Apuzzo.

I asked Mr. Apuzzo how long he had been running this place, or words to that effect. He said he was operating—he leased the butcher shop. That's all he ran, that part of the business, was the butcher shop.

I said, "Who did you lease it from?"

He said, "From a man named John Sloan."

I said, "Is Mr. Sloan here now?"

He says, "No."

"Where can I get in touch with Mr. Sloan?"

He says, "363."

"You mean in this building, 363?"

He says, "No. I think it's Ninth Avenue."

(141) I recorded the name and address.

* * * * *

(142) Q. Now, did you have a further conversation with Mr. Apuzzo after you finished searching the safe? A. Yes. I then told Mr. Apuzzo that I wanted (143) the policy slips on the premises after the safe had been opened. He turned to the butcher, a gentleman named Broussard, I believe, and he pointed to a scale, probably three feet away from where we were standing, and he said, "Give him the slips."

Q. And then what happened? A. Mr. Broussard removed the base or the platform of this meat scale, and there I found 150—150-some-odd slips totaling thousands of numerals.

* * * * *

(146) *Cross Examination by Mr. Roseman:*

* * * * * *

(147) Q. And were you armed prior to entering the premises? A. That's right.

Q. Were you armed with firearms? A. That's right, sir.

Q. And at any time did you put these firearms in your hand? A. I did, sir.

* * * * * *

(149) Q. Did you see the defendant Apuzzo? A. I did.

Q. What was the look on his face? A. Not any different than it is now.

Q. He didn't look startled? A. If he did, I didn't notice it.

Q. Did he look amazed? A. I don't recall.

Q. Did he look frightened? A. Not that I noticed.

* * * * * *

(157) Q. Didn't you hear the man with the box of ties say he was selling some ties in the back? A. Yes.

Q You heard that? A. Oh, he told me that later on.

Q. When did he tell you that? A. After I was there one or two moments.

Q. But he did tell you that? A. Oh, yes.

Q. And did you hear Mr. Guthrie say anything to these men? A. I don't recall.

Q. Did you hear Mr. Giantjasio say anything to these men? A. I believe both Mr. Guthrie and Mr. Giantiasio—

Q. No, I asked if Mr. Guthrie said anything, and you said you don't recall. Are you now going to change your testimony? A. No.

(158) Q. Do you now recall— A. I would rather say yes, they assisted me in questioning all four persons.

Q. I didn't ask you whether or not they assisted you. I asked you whether or not they said anything or did

Mr. Guthrie say anything? A. I don't recall just if he did say anything.

Q. Well, now, did Mr. Giantiasio question Mr. Apuzzo? A. Not in my presence.

Q. Did you question Mr. Apuzzo? A. I did.

Q. What did you say to him and what did he say to you? A. I asked Mr. Apuzzo how long he had been running this place.

Q. Referring to the butcher shop? A. Referring to the butcher shop, or referring to the place in—

Q. What did he say? A. He said he had recently leased it from a Mr. John Sloan.

Q. And did you ask him how long he had been at those premises? A. Yes. And I believe his reply was "A short time," a short period or short something of that nature.

(159) Q. When you say "short," that could be a year, five years, two months or what? A. I don't know what he meant by it.

Q. Well, did you ask him how long in period of time he had been there? A. Yes. "A short time."

Q. He didn't say to you what "A short time" was, what he said was "A short time"? A. That's right. He said "A short time."

Q. And did you ask him whom he employed in the butcher shop? A. Yes.

Q. And what did he tell you? A. He employed two persons, Mr. Broussard and a Mr. Robinson. I believe that's the name.

Q. And were they the ones who sold meat in the front? A. That's right, among other things.

Q. He said to you, among other things, they sold— A. No. He didn't say that.

Q. That's what you just told the jury. A. The way you put that question I misunderstood it, perhaps.

Q. Well, what did he say, so that the jury will know?

Martin D. Lemler—for Government—Cross

A. He told me that he employed these two men (160) as butchers, Mr. Broussard and Mr. Robinson.

(161) Q. Did he ever tell you he was in the policy business? A. No, sir.

Q. In fact, he told you he was in the butcher business? A. That's right.

Q. In fact, he also told you that if there was policies, he didn't know about it; that's right, Mr. Lemler, isn't it? A. No, I don't believe he said that.

Q. In words or substance? A. He told me he didn't have anything to do with policies, if that is what you mean.

Q. That is what I am after, Mr. Lemler. A. Yes.

(163) Q. Sure. You asked him to open the safe, and he said he couldn't he didn't know the combination. He was excited. Didn't he tell you he had to call his brother-in-law to find out the combination, Mr. Isidore is that right, Mr. Lemler? A. I don't think he ever—no, that is not so.

Q. Did he make a telephone call to ascertain the combination? A. He did not.

(164) Q. He just opened it? A. That's right.

Q. Just like that? A. That's right.

Q. First he made an objection; is that right? A. That's right.

Q. So he didn't open it just like that? A. That's right.

(165) Q. In fact, that was the reason he was taken downtown. Weren't you looking for someone to identify him as accepting wagers? Wasn't that the purpose? A. I am speaking for myself. I arrested him, not for accepting wagers.

Q. What did you arrest him form? A. For operating that wagering place.

Q. Is that what you arrested him for? For operating a wagering place? A. Gambling place.

(166) Q. Is that a Federal crime? A. It's a Federal crime.

Q. Don't you know that that is a state crime, Mr. Lemler? A. The state has no bearing on—

Q. But you know it is a state crime? A. It has nothing to do with the Federal Wagering Act.

Q. There is no Federal law— A. Yes; there is.

* * * * * *

Q. How many more cases like this have you participated in, Mr. Lemler? A. On that day.

Q. As a raiding— A. On that date.

Q. At any time in your life? A. I think that was the first one made in this district.

(167) Q. And how many more have you participated in? A. None.

Q. Zero? A. That's right.

Q. The first and the last; is that right, Mr. Lemler? A. Yes, sir.

* * * * *

Q. He challenged you as far as operating an establishment was concerned, didn't he? He challenged you? A. He told me didn't know—he didn't do any gambling on the premises.

* * * * *

(170) Q. Did you take those checks? A. I took checks out of the safe.

Q. Did the defendant ask you to return those checks on August 5, 1953? (171) A. He might have.

Q. Did he tell you what those checks were for, on August 5, in any conversation had with him? A. I think I asked him what he was doing with all those City, State and Federal checks.

Mertin D. Lemler—for Government—Cross

Q. And what did he say? A. He told me he just cashed them for customers.

Q. Who purchased meat? Didn't he tell you that? A. Well, I don't recall that part of it. He did cash them for customers.

* * * * *

(172) Q. Did you hear him discuss with Mr. Broussard that if there were any slips to please give them to the Federal officers?

The Witness: Would you mind repeating that question?

Mr. Roseman: Read it, please.

(Question read.)

A. Well, he did instruct Mr. Broussard to give me the policy slips, as I related a few moments ago.

Q. Because that is what you were looking for, isn't that right? A. That's right.

Q. He never said "Those are my policy slips," did he? A. He pointed to the scale.

Q. After he spoke to Mr. Broussard, isn't that right? A. At the same time.

* * * * *

(176) Mr. Leisure: No. There has been testimony that meat was sold, Judge. I am not saying there was not a butcher shop there. In fact, the law is clear that a man can be conducting a butcher shop and a policy operation at the same time.

* * * * *

(178) *By Mr. Roseman:*

Q. At any time prior to today, have you seen any invoices regarding the purchase of meat by this defendant for the year 1953? A. I did, sir.

Q. Where did you see them? A. On the premises.

Q. Did you examine them? A. I looked at a number of them, sir.

Q. Did they show purchases of a considerable amount of meat? A. They did, sir.

Q. Do you know what quantities were represented or what the purchase price was, Mr. Lemler? A. I can't offhand say, no.

Q. Can you give us an approximation? A. I can't.

Q. Was it a considerable amount of money? A. I imagine it ran into some money, yes, sir.

* * * * *

(179) Q. Mr. Lemler, I believe you testified this afternoon that at or about the time that Mr. Apuzzo spoke to Broussard he pointed to the scale. A. That's right.

Q. Is that after Broussard had told Apuzzo that the slips were in the scale? A. Well, I don't know if Mr. Broussard ever said a word to him. He didn't in my presence.

Q. Do I understand your testimony, Mr. Lemler, that Broussard did or did not talk to Mr. Apuzzo (180) prior to the time that you say that Mr. Apuzzo pointed to the scale? A. They didn't speak between them in the presence of some agent. I feel confident in saying that. Certainly not in my presence.

* * * * *

(181) Q. Is that the only one you were looking at? A. I had the entire area under surveillance, mentally— or rather—

Q. You didn't see what was behind you, did you? A. Well, I was up against the wall. There couldn't be anything behind me.

Q. There was nothing behind you? A. No, nothing. Perhaps a shelf of some sort.

Q. So that the jury will understand, how far was Mr. Apuzzo from you when your back was against this wall? A. Possibly a foot or so.

Q. A foot? A. Possibly.

Q. Wasn't it behind the counter? A. No. He was right in front of me, behind the counter. We were both behind the counter.

Q. I see. And Mr. Broussard was also behind the counter? A. That's right.

Q. Some few feet down? A. That's right.

Q. Where was the scale? A. Right directly in front of Mr. Broussard, and perhaps 3 feet from us.

Q. Mr. Broussard had his back to the scale or was facing the scale? A. I think he was facing it.

(182) Q. You think he was facing it? A. Yes.

Q. Did he point to the scale? A. Mr.—

Q. Did Broussard point to the scale? A. No.

Q. Did he say the slips were there? A. No.

Q. Did Apuzzo point— A. He said, "Give the fellow the slips." He was pointing right to the scale. I was right there.

Q. Did he say there were slips in the scale? A. He said—

Q. Did he say there were slips in the scale? Yes or no, Mr. Lemler. A. No, sir.

Q. And you were saying he pointed, with no words? A. With words.

Q. What were those words, again? A. "Give this fellow the slips." "Give this guy the slips"—to be exact.

Q. Meaning you? A. That's right.

Q. Didn't you tell this jury this afternoon that Mr. Apuzzo said he didn't know about any slips in the store? Did you say that? A. That's right.

Q. Did you say that? A. That's right.

Q. I think you said it three or four times? A. Possibly.

(183) Q. But he pointed; is that it? A. Pointed and directed Mr. Broussard to give me the slips.

Q. To give you fellows the slips? He said, "Give him the slips"?

Mr. Leisure: Your Honor, I am going to object to this. I think this is pretty clear, and I don't see any conflict. I think he is going over it unnecessarily.

Mr. Roseman: I am not pointing out any conflict. I am attacking the credibility of the witness, your Honor. I think this is the nub of the entire case.

The Court: You think you can attack the credibility of the witness by going over and over again what was said, always saying something different from what the witness said? Is that it?

Mr. Roseman: In a way, because there has been conflict with Mr. Guthrie's testimony.

The Court: There certainly has to be a limit to it. We cannot go on forever

Mr. Roseman: All right, Judge. I shall try and wind it up.

Q. You just said it was a direction, not a request—A. Yes.

(184) Q. It was more or less like an order? A. I say, yes.

Q. And that was after you had questioned Mr. Apuzzo and had informed him that you were looking for slips; is that right? A. That's right.

* * * * *

(185) Q. Did you ever take a written statement from Mr. Apuzzo? A. I didn't.

* * * * *

(187-188) VINCENT J. GIANATASIO, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct Examination by Mr. Leisure:

* * * * *

(192) Q. Mr. Gianatasio, was there a conversation with regard to policy slips after you came out of the back room? A. Yes. Special Investigator Lemler asked Mr. Apuzzo, after he had opened the safe, he said to Mr. Apuzzo, "Where are the policy slips?"

So I heard Mr. Apuzzo say to Ernest Broussard, who was behind the counter, "Ernie, give him the policy slips in the bottom of the scale," pointing to the scale.

Q. What happened then? A. I saw Broussard walk over to the scale, lift (193) up the top, reach down into the scale and hand Special Investigator Lemler a large batch of policy slips.

* * * * *

(194) *Cross Examination by Mr. Roseman:*

* * * * *

(202) Q. Did he tell you how long he was a butcher? A. A long time. I don't recall the number of years.

Q. 15, 20 years? A. A long time, yes.

* * * * *

(207) Q. Did you then have a conversation with the defendant? A. Yes. I—

Q. In the rear? A. In the rear of the store. I got a piece of paper—

Q. What did you say to him and what did he say to you? A. I asked him his name. He gave me his name. I asked him his address. He gave me a Bronx address. I asked him what his business was. He told me butcher. I asked him whether he was married. I asked him if he was ever arrested before.

Mr. Roseman: At this time, your Honor—

The Witness: You wanted to know what I (208) asked him.

Mr. Roseman: All right.

The Court: At this time what?

Mr. Roseman: I don't want the witness to just keep answering. I would rather ask the questions.

The Court: You asked him what the conversation was. I didn't know that he had finished.

Q. Did you tell Mr. Lemler—

The Court: Had you finished telling about the conversation?

The Witness: No, sir.

Q. Did you tell Mr. Lemler—

The Court: Just a minute. He didn't finish.

A. When I asked him if he was arrested before, he told me he had been arrested for policy about 15 years ago. He didn't know the exact date.

Mr. Roseman: At this time I object to the testimony and move for a mistrial.

The Court: On what ground?

Mr. Roseman: On the ground that this is prejudicial to the defendant.

* * * * * *

(209) Mr. Roseman: Yes, but that conversation is prejudicial.

The Court: You brought it out.

Mr. Roseman: He asked him what the conversation was and he didn't bring it out.

The Court: Then why did you ask him to repeat it?

Mr. Roseman: I wanted to see if he was telling the truth.

Mr. Leisure: I think the answer was perfectly responsive to the question.

The Court: It was responsive. It don't see how you can control what the witness said in answer to the question.

Mr. Roseman: I didn't open any door.

The Court: You asked him what was said.

Mr. Roseman: I had no idea that was going to be the answer.

Mr. Leisure: May I say to your Honor that when I asked the questions I specifically tied it in with certain incidents. I asked him if there was a conversation with regard to the safe, as I recall it. I asked him if there was a conversation with regard to the scale. Now, this question, as I recall it, (210) was much broader than that. He asked him if he had any conversation at all in the back room with him.

The Court: Yes.

Mr. Leisure: For that reason, the Government's contention is that it is an entirely responsive answer.

Mr. Roseman: May I at this time, your Honor, discuss this point with your Honor since it is 4.30 and I would like to discuss it more fully.

The Court: All right. I will excuse the jury until Monday morning at half-past ten.

You remember what I have said to you about discussing this case and also about keeping an open mind. You haven't heard the end of it yet.

I wish you a very pleasant holiday.

(Jury leaves courtroom.)

The Court: Mr. Reporter, will you please read the question about the conversation.

(Question read.)

Mr. Roseman: May I say this, your Honor, that assume for argument that in this conversation this witness was told that this defendant had ten previous convictions. Is he permitted to bring that out because I asked him what conversation he (211) had?

The Court: I don't know why not, subject to instruction on it.

Mr. Roseman: In all the cases that I have tried, and read and appealed, the hundred of cases, unless I ask specifically that question, a witness is usually told by the District Attorney, "Please don't bring in anything about arrests or convictions in the conversation unless someone asks you."

The Court: How could that possibly be when he is asked a question, after having been sworn to tell the truth, to give the whole truth, he is asked what a conversation is? How could he possibly suppress part of the conversation?

Mr. Roseman: He omits the prejudicial part. The judges in this court have ruled where there are informers, and the informer meets the defendant in jail, the informer, when he gets on the stand, he says, "I didn't meet him in jail. I met him, period," and if I said, "Where did you meet him?" and then he says, "In jail," I asked for it, but not before, in all the cases I have tried.

The Court: What you want to show me, then, (212) is a case which says that where counsel asks for a conversation and the conversation brings out

something which couldn't have been brought out by the prosecution, that the counsel who asked the question is entitled to a mistrial.

Mr. Roseman: That is right, your Honor, and it is prejudicial to the effect that the jury is being told that this man had been arrested before, had been in conflict with the law, and it should not have been told. He didn't tell it on direct testimony.

The Court: How are you going to avoid it when you ask the question?

Mr. Roseman: He omits that portion about the arrest. I am not going to say, "You omitted the portion about the arrest." I am not going to complain. If the defendant doesn't complain, your Honor, what harm—

The Court: It is a very simple matter and you have until Monday morning to show me a case.

Mr. Roseman: All right, your Honor. At this time I renew my motion for a mistrial and the declaration of a mistrial and the withdrawal of a juror on the ground that the prejudicial statement (213) contained in a conversation with a tax enforcement official should have be omitted, that the defense counsel didn't do anything but ask the same question that the prosecutor did saying, "What conversation?" And that should have been omitted.

The Court: We might as well settle that because I don't think that is true. I think that in every case the prosecutor did limit himself to a subject.

Mr. Roseman: I did, too conversation pertaining—not about arrests and convictions. I didn't ask him about that.

The Court: I don't know why you didn't if you asked for the whole conversation. The conversation was about arrests and convictions.

Mr. Roseman: I respectfully differ with your Honor. I know the other judges in this court have instructed—

The Court: All you have to do is show me a case Monday morning.

Mr. Roseman: May I also ask your Honor, since I can't get to the judges, if possible that I know. Judge McGohey had a case where I was involved (214) and where the informer was on the witness stand, he met the defendant in jail, Judge McGohey declared a mistrial of his own order where the informer said, "I met him in jail," and he declared a mistrial. Now, he could have said, "I met him, period."

The Court: In response to whose question was that?

Mr. Roseman: I am not sure whether it was the prosecutor's or the defense counsel.

The Court: That would make a lot of difference.

Mr. Roseman: But that happened. I don't see why a defendant should be penalized where defense counsel is simply asking a question what is the conversation that this witness, who has testified in courts knows that it is prejudicial to bring out any arrests or convictions.

The Court: I cannot assume he knows anything of the kind.

Mr. Roseman: He can be questioned now whether he knows that that is not permissible.

The Court: That would not make any difference. He was asked to give the conversation. (215) and he did.

Mr. Leisure: The Government's position is that many, many responses to questions on cross examination may be prejudicial and that in this in-

stance the answer was completely responsive to the question and that regardless of whether or not the Government framed its questions in such a way as to pinpoint, Mr. Roseman is correct when he says a witness should not respond prejudicially in response to Government questions, but I am sure that that rule does not apply on cross examination.

Mr. Roseman: But this is not a case where I opened the door, that I pointed out to your Honor where the answer is, "I met him," and I said, "Where did you meet him?"

The Court: All the oratory in the world won't have the slightest effect. It is the case I want to see. I want to know what the law is.

Mr. Roseman: I will try in my utmost research ability to produce such a matter before you. I am only pointing out, your Honor, that in all the cases I have tried—

The Court: All you need to point out is something in a book.

(215a) Monday morning, 10.30.

(Adjourned to November 14, 1955, at 10.30 a.m.)

---

(216) New York, November 14, 1955;
10.30 o'clock a.m.

* * * * *

(The following proceedings took place in the absence of the jury.)

Mr. Roseman: Your Honor, may I proceed?

The Court: Yes, Mr. Roseman. You were going to look up some law and let me know what you found.

Mr. Roseman: Well, if your Honor please, I spent all day Friday with my young man and I was able to uncover several cases which throw some light on this subject. However, I must say very candidly that eight hours' research failed to uncover one particular case which was exactly on all fours. However, on this fine part of the law there is always something new and some little confusion. I did uncover however, the fact that where the United States Attorney has asked similar questions, or the defense counsel, and the answer by the enforcement officer was a general statement which (217) included an extraneous matter, and caused that to arise, that obviously the Court treated it as error, and in several of the cases I must confess that the Appellate Court said that, "While we regard this seriously we think it was harmless but only because of the overwhelming evidence of guilt."

So that the appellate courts look upon this subject as serious, but in the appellate tribunals the question does not loom as important in view of the other evidence in the case.

Now, I found a case of Howe v. United States, Court of Appeals, 56 Fed. (2d) 305, where the judge said:

"We are unable to agree with the lower court which disregarded this arrest statement," and said that part of the conversation objected to could well have been left out and that it did not help the case any, because the Court I believe or I think even failed to tell the jury that such a statement has no place in the case and that since it did, then the jury should be admonished to disregard it. That was one case I found.

And there is another in the Ninth Circuit, the case of Sang Soon Sur v. The United States, 167 (218) Fed. (2d), 431. There an Internal Revenue agent upon arresting the defendant had received certain answers to their questions and they reduced them to writing, and those statements were introduced and there was objection upon the ground that this was extraneous matter which was received previous to the arrest. And the Court there held that the appellant entered the trial with a presumption of innocence, with a presumption of a good repitatfon unless he took the witness stand, and that such an issue should not arise unless the defendant took the witness stand, and that any such evidence showing the commission of independent crimes prior to the arrest, therefore, could never be justified on the basis that they were relevant. But I believe the Court in that case said that since the evidence was overwhelming it could not be considered a determining factor.

And again in Dressler v. The United States, 112 Fed. (2d), 972, at page 977, the Court there held that it was inconsistent with our traditional conception of fair trial to permit any information to get to a jury which influenced or might influence it in its deliberations in bringing forth a (219) conviction not upon the evidence presented but rather on the fact that he might have been in skirmish with the law in some other matter.

Also in Shelton v. The United States, 169 Fed. (2d), 665, the United States marshals had arrested the defendant, but interrogating the United States marshals, defense counsel had brought prejudicial matters out, that there were statements of other offenses, but in that case I should like to call to your

Honor's attention the procedure that the trial court used in that case.

The Court: Yes.

Mr. Roseman: In that case the trial court sensing possible prejudicial error said in effect to the defense counsel: "Just a minute. You had better ask specific questions."

And defense counsel did not heed the Court's advice so that the improper response was actually for by defense counsel.

And what they said there also is that the error was harmless only because of the extenuating circumstances and the heavy evidence against the defendant.

I point out in this case at bar, if my (220) recollection is correct, that when he started to say arrest I broke in immediately and—.

The Court: Well, let us have the record read.

Mr. Roseman: Yes, your Honor.

(Thereupon the record was read as follows.)

"Q. What did you say to him and what did he say to you? A. I asked him his name. He gave me his name. I asked him his address. He gave me a Bronx address. I asked him what his business was. He told me butcher. I asked him whether he was married. I asked him if he was ever arrested before.

"Mr. Roseman: At this time, your Honor—

"The Witness: You wanted to know what I asked him.

"Mr. Roseman: All right.

"The Court: At this time what?

"Mr. Roseman: I don't want the witness to just keep answering. I would rather ask the questions.

"The Court: You asked him what the conversation was. I didn't know that he had finished.

"Q. Did you tell Mr. Lemler—

(221) "The Court: Had you finished telling about the conversation?

"The Witness: No, sir.

"Q. Did you tell Mr. Lemler—

"The Court: Just a minute. He didn't finish.

"A. When I asked him if he was arrested before, he told me had been arrested for policy about 13 years ago. He didn't know the exact date.

"Mr. Roseman: At this time I object to the testimony and move for a mistrial."

The Court: All right.

Mr. Roseman: Now, your Honor, I feel at this point the jury at least should have been told that it had no place, as I was attempting to cut in, and and having been apprised of what was happening initially in the trial I tried to stop him, as the record indicates.

The Court: There is not any doubt about that. And if your motion for a mistrial is not granted I will instruct the jury that you attempted to keep this out and that it was brought in on the Court's insistence that the whole conversation should be given. And I would instruct the jury that the (222) fact of a person's arrest has no bearing whatsoever on the question of his guilt, because just as I instructed them at the start, a man is presumed to be innocent, and the fact that he was arrested does not indicate that he was guilty.

Mr. Roseman: I just wanted to point out your Honor, the operation of my mind so that it will be clear to your Honor, too.

The Court: Yes.

Colloquy

Mr. Roseman: On cross examination, if your Honor recalls, I went in very hastily into questions of what did the defendant say to you and what did you say to the defendant. That question was addressed to Lemley, and this was in a small room 12 x 15, which would be heard, or it could be heard what everybody else said, and then for the first time after Mr. Lemley had been examined and Gianatasio was asked what did you say when you interviewed the defendant and what did the defendant say to you, he did not say anything about these arrests.

So, your Honor, you could see that I felt safe after there were these three cross examinations and the testimony having come in from three witnesses, that such statements which had never been mentioned (223) before was not going to come in, so that it was brought in through the back door, that is to say.

The Court: I am not disposed to put great weight on the questions which resulted in the bringing forth of this answer, but what I am interested in is whether, no matter how it happened, there can be a fair trial. However, I will hear you on that, Mr. Leisure.

Mr. Leisure: The Government's position is this: Since this was cross examination and, secondly, since the answer was responsive to the question, it was not volunteered or beyond the scope of the question, that the defendant must be bound by it.

The art of cross examination is fraught with difficulty as is well known among the bar and it can be a dangerous area, and the only alternative to what happened here that I can see is that the Government should be required to instruct the witness

not to testify truthfully in that area if he is asked.

Now, I always make it a practice to instruct my witnesses not to volunteer anything that you do not need to on cross and to be responsive.

(224) I think a reading of the record indicates that this was entirely responsive answer. This was not putting a dagger, so to speak, into the defendant's back on the part of the witness at all. His first answer was yes when he was asked if he was interviewed.

I found one case in the area where Mr. Roseman indicated it was hard to find exactly a case in point, and that is quite the fact, but this is a conspiracy case, Metcalf v. The United States, 195 Fed. (2d) 213, and that was decided in 1952 in the Sixth Circuit.

And the question there was whether or not certain evidence was admissible against the two conspirators named Metcalf and Mullins. And the counsel who represented those two defendants on cross examination of the witness brought out a great deal of testimony which the Court later held to be admissible, and the Court said:

"However, the statements of Macom and Cook were read at the request of counsel for Metcalf and Mullins upon cross examination by him of Agent Staab, probably in the hope of bringing to the attention of the jury some evidence therein (225) favorable to the cause of his clients as well as what was unfavorable. The statements of Macom and Cook were thus made competent as to appellants Metcalf and Mullins."

And at a later point, at page 217, the Court said:

"There is no obligation on the Court to prevent

cross examination to which none of the parties objected."

The Government's position is that the door was opened entirely by defense counsel and the only way this could have been avoided as far as I can see it, would be to have a witness instructed during a course of a trial there were certain conversations that he should not testify to no matter how hard he was pressed, which I think is an undesirable result.

The Court: Perhaps there is no way of avoiding it and the only cure for it may be to start again. I certainly do not feel that I should disregard the matter as a sort of punishment to counsel by reason of his asking the question which called for this type of answer even if he ought to have realized that it might bring it out. It is obvious that he did not do it in an effort to get (226) error in the record because he attempted to prevent the witness from going on and testifying.

I am wondering whether I ought to reserve decision on this and pass on it on a motion to set aside the verdict if there should be a verdict of guilty.

Do you think that would be a sensible thing to do, Mr. Roseman?

Mr. Roseman: Yes, your Honor, under the circumstances not only sensible but I think eminently fair.

The Court: All right, then, that is what I will do. I will reserve decision, but I think I should instruct the jury that it ought not to have been brought in and that they are to disregard it, and that under our law the fact of an arrest is no evidence of guilt.

Mr. Leisure: The Government would certainly urge that also, your Honor.

The Court: All right. That is what we will do. Please call the jury in.

(At this point the proceedings in the absence of the jury terminated and the following proceedings took place in the presence of the jury.)

(227) The Court: Good morning, ladies and gentlemen. I am sorry that we had to keep you waiting. All I can do is to assure you that we have not been idle while you have been in there, which probably even in this short period may have seemed to you a lot of time.

However, at the close of the last session there was a witness on the stand who was asked a question by counsel for the defense and in answering the question said something about the previous arrest of this defendant.

That ought not to have been brought out. Counsel in asking the question did not expect that it would be brought out, did not try to bring it out, and it was only on my insistence, and I wrongly insisted on it, that he told the whole story that was brought out.

Now, the reason that the law does not permit testimony with respect to previous arrests is that an arrest means absolutely nothing; just as I told you at the beginning of the case, a man is presumed to be innocent until he is found guilty, and the arrest is nothing more than the information that I was talking to you about, so that it has no bearing on the question (228) in the eyes of the law. And you are to disregard anything you heard. You can blame me for anything that occurred in that respect, because neither counsel is responsible for the fact that was brought out.

Proceed, please, Mr. Roseman.

Mr. Roseman: Yes, sir.

VINCENT J. GIANATASIO, resumed.

Cross Examination by Mr. Roseman (Continued):

* * * * *

(233) Q. Did you in investigating the premises at 363 Lenox Avenue on August 5 see any invoices for the purchase of meat? A. Yes, sir.

Q. Did you peruse those invoices with your partner, Mr. Lemler? A. Yes, sir.

Q. About how many invoices did you see? A. All, offhand, I couldn't say about how many there were, but there were maybe about a hundred, maybe less, maybe more.

Q. A hundred invoices? A. About that.

Q. And the latest invoice was June 1953? A. Some date in June. That is to the best of my recollection.

* * * * *

(238) Q. What did the defendant say? A. The defendant said, "Ernie," pointing to the defendant Broussard and to the safe and the scale, he says, "Give them the slips from the scale."

Q. Give them the slips? A. From the scale.

Q. From the scale? A. Yes.

(239) Q. Did you tell that to the jury on Thursday? A. Well, I told them——

Q. "Give them the slips from the scale"? A. It was either in the scale, or from the scale, I just don't recall exactly.

Q. You don't recall whether it was "in" or "from"? A. Or "from." I don't recall exactly.

Q. Didn't you tell this jury on Thursday, "Ernie, give them the slips in the bottom of the scale"?

Mr. Leisure: I object to that question, your Honor, this type of cross examination.

The Court: Objection overruled.

Q. Did you say that to the jury on Thursday? A. I may have. I may have said that. I don't—

Q. In fact, if the stenographer read it back you would say you said it? A. Yes, sir, I would.

Q. Now, what was it, at the bottom of the scale, from the scale, in the scale, or what was it, Mr. Gianatasio? A. Well, the slips were inside the scale.

Q. I didn't ask you that, did I? I said what was said. I didn't ask you where the slips were. I said what did you say that the defendant said? (240) A. Well, whatever I have testified to, I testified to the best of my recollection.

Q. That is right, and what were the words that were used, "in the scale," "from the scale," or "at the bottom of the scale"? A. It may have been "in the scale," "from the scale," or "in the bottoms of the scale." I don't—I don't remember the exact words. It could have been either.

Q. It does not make any difference to you, does it? A. No, sir, it does not.

Q. Any of the words, that does not make any difference to you, does it? A. As best I can recall, I try to testify.

Q. Don't you think it is important that you remember the words that were said by this defendant, Mr. Gianatasio? A. Yes, sir, I think so.

* * * * * *

(297) Mr. Leisure: Apparently.

The Court: One wilful omission and the

other wilful evasion. That is what the Justice seems to say in this case. It sounds like saying what your opponent says, and that is when you charge a conspiracy you by that very fact charge that there is a wilful evasion rather than omission, because two people could not in logic get together and say "We agree to omit."

* * * * *

(298) Mr. Leisure: It is hard for me to draw the distinction from conspiring and evading and conspiring (299) and omitting. It seems to me—

The Court: I don't think there is any.

* * * * *

(320) ERNEST BROUSSARD, called as a witness on behalf of the defendant, being duly sworn, testified as follows:

Direct Examination by Mr. Roseman:

Q. Mr. Broussard, are you under subpoena here by the defendant? A. Yes, I am.

Q. Do you know the defendant in this case? A. Yes, I do.

Q. And were you employed by the defendant in 1953 as a butcher's helper? A. Yes, I was.

Q. At the premises, 363 Lenox Avenue, in the Borough of Manhattan? A. Yes.

Q. And for how long had you been so employed by this defendant? A. Oh, all together about eight years.

(321) Q. As a butcher's helper? A. Yes.

Q. That is at the store, 363 Lenox Avenue, Borough of Manhattan? A. Yes.

Q. And at his other store previously? A. Yes.

Q. 387 Lenox Avenue? A. Right.

* * * * *

Q. Now, Mr. Broussard, going back to August 5, 1953,

at the premises, 363 Lenox Avenue, did you see some men rush into the store? A. Yes, I did.

Q. What were they doing? A. Well, a couple of men rushed in and they had pistols in their hands.

Q. A couple of men rushed in and they had pistols in their hands? (322) A. Yes. I thought it was a stick-up or something.

* * * * * *

(323) Q. There were eventually policy slips found in the scale behind the counter? A. Yes.

Q. And did you find them? A. I give it to them.

Q. Prior to that what happened, Mr. Broussard? Will you please tell the jury. A. Well, Mr. Apuzzo called me from behind the counter and he said, "These people say there are (324) policy slips in there. If you know anything about it please give it to them." He wants to cooperate with the people.

Q. Did he point to any scale? A. No.

The Court: Please do not lead.

Q. What did you do after the defendant told you that? A. I walked back to the counter and told him, "Here are the slips."

Q. You secured the slips? A. Yes.

Q. Were those slips yours? A. Yes, some of them.

Q. Had you been taking policy slips? A. I had.

Q. For how long? A. About two months.

Q. Did you tell Mr. Apuzzo that you had been taking policy slips? A. No.

Q. Did he know anything about it? A. No, he did not.

* * * * * *

(326) Q. Now, you admit now that you were accepting wagers on the premises in August of 1953, is that correct? A. Yes, sir.

* * * * * *

(327) Q. Did you use the white pads back there in connection with the wagering operations? A. No.

Q. Did you use the large number of pencils (328) back there in connection with the wagering operations? A. No.

Q. Did you use the various money wrappers that ran from one cent up to a dollar in connection with the wagering operations? A. No, we always used this for the restaurant.

Q. Was there a safe inside the store at the time you worked there in August 1953? A. Yes.

Q. Did you use that safe yourself? A. Occasionally.

* * * * *

(335) ARTHUR ISIDORI, called as a witness on behalf of the defendant, being duly sworn, testified as follows:

Direct Examination by Mr. Roseman:

* * * * *

(336) Q. Is there a safe in the premises, 363 Lenox Avenue? A. Yes.

Q. Do you have the combination of that safe? A. Yes, sir.

Q. And for how long have you had that combination? (337) A. Since the safe was there.

Q. And how long is that? A. Well, it is six years, about, since I had been working there.

Q. Who else has the combination of that safe besides yourself? A. Mr. Apuzzo, and also William Duday.

Q. Now, Mr. Isidori, do you recall August 5, 1953? A. I do.

Q. Were you physically at the premises, 363 Lenox Avenue, on that day? A.

Q. Where were you? A. At home.

Q. And had you been on vacation? A. Two weeks.

Q. For how long? A. That was my second week.

Q. On vacation? A. On vacation.

Q. That means the week in which August 5, 1953 occurred was your second week of your vacation? A. That is correct.

Q. And the one prior to that you were also on vacation? A. That is correct.

Q. Do you recall what happened that day at your home? A. Well, I was home and—

* * * * *

Q. You got a telephone call? A. Yes.

Q. From whom? A. From Mr. Apuzzo.

Q. And what did he say to you and what did you say to him? A. Well, he asked me for the combination of the safe. I says, "What for? You know it." Well, he sounded very excited. He said, "There are a lot of men in here, agents." * * * I gave him the combination over the phone * * *"

* * * * *

(404) Mr. Roseman: May I move to set aside the verdict, your Honor, as against the weight of the evidence, contrary to law and the facts, and I also renew my motion upon which your Honor reserved decision, on my motion for a mistrial because of the fact that prejudicial matter was given to the jury, and we would not know the effect of such devastation unless we prodded the jurors' minds, and I renew that motion.

The Court: What do you say to that, Mr. Leisure?

Mr. Leisure: I will repeat, your Honor, what I argued at the time the motion was first brought on, and that is that the prejudicial matter was brought out on cross examination as a result of a question (405) put by the defense counsel to which the answer was completely responsive.

I think that any error that there was was certainly cured by the Court's charge to the jury despite the fact that it was a responsive answer to a question on cross examination, that the jury should

not consider the evidence of the prior conviction in determining whether or not the defendant was guilty of the charges before the Court in this case.

The Court: You mean the evidence of previous arrest?

Mr. Leisure: That is correct.

The Court: I am not inclined to put much weight on the way this thing got into the case. I think the real question is what, if any, damage it did.

The cases that you gentlemen found on the subject seemed to indicate that it was not a hard and fast rule that if evidence of a previous arrest gets into the case it is ground for a mistrial, and that makes it necessary to weigh the effect of what was said in the light of all the circumstances of the case.

I think that two of the cases which you found (406) said that it would be disregarded in view of the fact that the evidence of guilt was so clear.

Do you think, Mr. Leisure, that you could say that really could be applied here?

Mr. Leisure: I would think so, your Honor, and beyond that I think there is the possibility that that might have been an arrest as in the present case, or where there were prior similar acts, or where these arrests were not connected with the particular case.

The Court: I do not understand your statement, Mr. Leisure.

Mr. Leisure: In other words, the charge here that he was in the busines of accepting wagers and did not pay the taxes. The arrest indicated that it was a State crime that had been committed. In this case the evidence was strictly to an arrest, not a conviction, but that he had been arrested for the

very type of activity. So I would urge not only what your Honor says that the evidence in the case beyond the evidence of prior arrest is very conclusive of the defendant's guilt, but beyond that it might not have been error if the Government put it in on prior similar acts, although that question is not before the (407) Court.

The Court: I am inclined to think that under all the circumstances of this case it did no harm, and I will deny your motion.

Order of Noonan, *U.S.D.J.*

(470)

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

Inf. # C 145-283

[SAME TITLE]

The defendant Salvatore Apuzzo, above named, having moved by notice of motion dated November 24, 1954 for an order directing the return of certain property, to wit, books, papers, records, currency, etc., belonging to the defendant, schedules of all of which are annexed hereto and which on the 5th day of August, 1953 at premises 363 Lenox Avenue in the Borough of Manhattan, City and State of New York in this District was unlawfully seized and taken by agents, special agents or investigators of the Bureau of Internal Revenue and that such property be suppressed as evidence against him in this and or any other criminal proceeding and or that a hearing be had on the allegations contained herein, and for such other and further relief as to the Court may seem just and proper in the premises, and said motion having regularly come on to be heard and after reading and filing the defendant's notice of motion dated November 24, 1954 and affidavit of Salvatore Apuzzo, duly sworn to the 25th day of November, 1954, in support thereof, and the affidavit of Judson A. Parsons, Jr., Assistant U. S. Attorney, duly verified the 13th day of December 1954, in opposition thereto, and after hearing Arnold D. Rosenman, Esq., Attorney for the defendant Salvatore Apuzzo in support thereof, and (471) Judson A. Parsons, Jr., Assistant U. S. Attorney, in oppo-

sition thereto, and due deliberation having been had, and having filed its written opinion dated December 22, 1954; it is

ORDERED that the motion of the defendant Salvatore Apuzzo be and the same is hereby denied.

Dated: New York, New York
May 23, 1955.

NOONAN,
U. S. D. J.

Order of Leibell, *U.S.D.J.*

(472)

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

Inf. # C 145–283

[SAME TITLE]

The defendant, Salvatore Apuzzo, above named, having moved by notice of motion dated November 24, 1954 for an order directing the United States Attorney to serve and file a bill of particulars as enumerated therein, and for such other and further relief as to the Court may seem just and proper in the premises, and said motion having regularly come on to be heard, and after reading and filing the defendant's notice of motion dated February 4, 1955 and affidavit of Arnold D. Roseman, duly sworn to the 4th day of February, 1954, the Information filed October 27, 1954, and memorandum of law in support thereof, and the affidavit of Judson A. Parson, Jr., Assistant U. S. Attorney, duly verified the 4th day of May 1955, and memorandum of law in opposition thereto, and after hearing Arnold D. Roseman, Esq., Attorney for the defendant Salvatore Apuzzo in support thereof, and Judson A. Parsons, Jr., Assistant U. S. Attorney, in opposition thereto, and due deliberation having been had, and having filed its written opinion dated May 10, 1955, it is

ORDERED that the motion of the defendant Salvatore Apuzzo be and the same is hereby denied.

Dated: New York, New York
May 31, 1955

VINCENT L. LEIBELL
U. S. D. J.

Judgment and Commitment

(477)

UNITED STATES DISTRICT COURT

FOR THE

SOUTHERN DISTRICT OF NEW YORK

No. C 145/283

[SAME TITLE]

On this 13th day of December, 1955, came the attorney for the government and the defendant appeared in person and by counsel.

IT IS ADJUDGED that the defendant has been convicted upon his plea of not guilty and a verdict of guilty by a jury of the offense, of while engaged in the business of accepting wagers in the County of New York, New York, did unlawfully, wilfully and knowingly fail to pay the special tax imposed by law and fail to register with the Director of Internal Revenue for the Upper Manhattan District of New York, at New York, New York

T 26 Sec. 2707(B), 3277, 3290, 3292, 3294, 3291(a) USC
as charged in two counts

and the Court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized

representative for imprisonment for a period of sixty days and fined $3,000.00 on count one. Defendant to stand committed until fine is paid or otherwise discharged according to law.

Imposition of sentence is saspended on count two. Probation for Four years, to begin after service of sentence on count one, subject to the standing probation order of this Court.

Bail fixed in the sum of $1500. pending appeal. Defendant paroled to give bail.

It is ordered that the clerk deliver a certified copy of this Judgment and Commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

E. J. Dimock
United States District Judge

Order of Walsh, *U.S.D.J.*

(511)

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

Information No. C 147–278

[SAME TITLE]

The defendant Salvatore Apuzzo, above named, having moved by notice of motion dated June 24, 1955 for an order dismissing said Information and, further, directing the return of certain property and for suppression of certain evidence against the defendant Apuzzo and or that a hearing be had, and further, directing the United States Attorney to serve and file a bill of particulars, and for such other and further relief as to the Court may seem just and proper in the premises; and said motion having regularly come to be heard, and after reading and filing the defendant's notice of motion dated June 24, 1955 and the affidavit of Arnold D. Roseman, duly sworn to the 24th day of June 1955, the Information No. 147–278, filed June 16, 1955, and the affidavit of Judson A. Parsons, Jr., assistant United States Attorney, duly verified the 30th day of June 1955, in opposition thereto, and after hearing Arnold D. Roseman, Esq., Attorney for Defendant Salvatore Apuzzo in support thereof, and Judson A. Parsons, Jr., Assistant U. S. Attorney, in opposition thereto, and due deliberation having been had, it is

ORDERED that the motion of the defendant Salvatore Apuzzo to dismiss the information herein be and the same is hereby denied, and it is

(512) ORDERED that the motion of the defendant Salvatore Apuzzo to suppress the evidence herein and/or that a hearing be had, be and the same is hereby denied, and it is further

ORDERED that the motion of the defendant Salvatore Apuzzo for a bill of particulars herein be and the same is hereby denied.

Dated: New York, New York
July 5, 1955

LAWRENCE E. WALSH
U. S. D. J.

Judgment and Order of Probation

(516)

UNITED STATES DISTRICT COURT

FOR THE

SOUTHERN DISTRICT OF NEW YORK

No. C 147/278

[SAME TITLE]

On this 13th day of December, 1955, came the attorney for the government and the defendant appeared in person and by counsel.

IT IS ADJUDGED that the defendant has been convicted upon his plea of not guilty, and a verdict of guilty by a jury of the offense of T 18 Sec. 371 USC—Conspiracy to unlawfully, wilfully and knowingly engage in a business of accepting wagers in the County of New York, New York and fail to register with the director of Internal Revenue for the Upper Manhattan District of New York

as charged

and the Court having asked the defendant whether he has anything to say why Judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the imposition of sentence is suspended.

Probation for four years to begin after service of sentence on count one of Information C 145/283, subject to the standing probation order of this Court.

IT IS FURTHER ORDERED that during the period of probation the defendant shall conduct himself as a law-abiding industrious citizen and observe such conditions of probation as the Court may prescribe. Otherwise the defendant may be brought before this Court for a violation of the Court's orders.

IT IS FURTHER ORDERED that the clerk deliver two certified copies of this Judgment and Order to the probation officer of this Court, one of which shall be delivered to the defendant by the probation officer.

E. J. DIMOCK
United States District Judge

WILLIAM V. CONNELL
Clerk

Notice of Appeal

(480)

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

C 145-283

C 147-278

[SAME TITLE]

1. *Name and address of Appellant:*

SALVATORE APUZZO
160 Ferndale Road
Greenburgh, New York

2. *Name and address of Appellant's attorney:*

ARNOLD D. ROSEMAN
120 Broadway
New York 5, New York

OFFENSE: Appellant was charged in Information # C 145-283 with the crimes of engaging in the business of accepting wagers, individually and as a co-partnership with two other defendants during August, 1953 and wilfully failing to pay the special tax (First Count), and wilfully failing to register with the Director of Internal Revenue for Manhattan District (Second Count), (Title 26, U. S. Code, Secs. 2707(b), 3277, 3290, 3291(a), 3292 and 3294). In Information # C 147-278, appellant was charged with the crime of conspiracy, with the two same defendants, to violate said provisions of law in that appellant and these two other defendants engaged in the business of accepting wagers individually and as a co-partnership and failed

to pay the special tax and failed to register (Title 18, U. S. C. Sec. 371).

3. *Judgment of Conviction*

Appellant was found guilty by a jury on November 15, 1955 of the charges contained in the two informations and he was sentenced on December 13, 1955 by Hon. Edward J. Dimock, United States District Judge as follows:

On Inf. # C 145-283 (a) First Count—60 days at a penal institution to be designated by the Attorney General and fined the sum of $3,000 to stand committed until the fine was paid; (b) Second Count imposition of sentence suspended and placed on probation for a period of 4 years after sentence on First Count.

(481) *On Inf. # C 147-278*—Imposition of sentence suspended and placed on probation for a period of 4 years after sentence on First Count of C 145-283.

4. Appellant is at liberty on bail in the sum of $1,500, continued by Hon. Edward J. Dimock, U. S. District Judge pending appeal from the judgment of conviction.

5. The above-named defendant-appellant hereby appeals to the United States Court of Appeals for the Second Circuit from the above-stated judgment and from those orders made before trial denying defendant's applications for suppression of evidence unlawfully seized and for a hearing dated May 23, 1955 (Noonan, J); for a bill of particulars dated May 31, 1955 (Leibell, J) and for a dismissal of the information, suppression of evidence and a hearing and for a bill of particulars

relative to # C 147-278 dated July 5, 1955 (Walsh, J.); and from the orders denying appellant's motions for a judgment of acquittal, dismissal of informations, mistrial and for a new trial.

Dated: New York, New York
December 13, 1955

Arnold D. Roseman
Attorney for Appellant
Office & P. O. Address
120 Broadway
New York 5, N. Y.